

REMARKS

The Examiner indicated that restriction to one of three inventions is required under 35 U.S.C § 121:

I. Claims 1-8 and 17-20, drawn to a method of determining if a subject is trainable a method comprising a performance system, classified in class 434, subclass 247.

II. Claims 9-16, drawn to a method of taking measurement and training a subject, classified in class 482, subclass 8.

III. Claims 21-33, drawn to an apparatus comprising a sensor and a control system, classified in class 482, subclass 1.

Applicant affirms election is made with traverse to prosecute the invention (I) claimed under claims 1-8 and 17-20. Applicant reserves the right to file without prejudice a divisional application in connection with unelected claims 9-16 and 21-33.

Examiner stated that the information disclosure sheet filed 7/31/03 fails to comply with the provisions of 37 CFR 1.97, 1.98, and MPEP § 609 because the electronic documents were in the improper format. Examiner will kindly note that the cited references are currently properly formatted following the guidelines in MPEP 707.05(e). Applicant respectfully requests consideration by the Examiner of these documents.

The Examiner rejected claims 1-8 and 17-20 under 35 U.S.C. § 101.

The Examiner rejected claims 1-8 and 17-20 under 35 U.S.C. § 102(e) as being allegedly anticipated by Phillips *et al.* (US 6,592,502).

Applicant respectfully traverses the § 101 and § 102(e) rejections with the following arguments.

35 U.S.C. § 101

The Examiner rejected claims 1-8 and 17-20 under 35 U.S.C. § 101. The Examiner asserts that the claimed invention is directed to non-statutory subject matter, and further that claims 1-8 and 17-20 do not produce a useful, concrete, and tangible result and thereby do not provide a practical application. Applicant respectfully traverses this rejection asserting that Examiner has not established a prima facie case and has not offered any reasoning to support the argument.

35 U.S.C. § 102(e)

The Examiner rejected claims 1-8 and 17-20 under 35 U.S.C. § 102(e) as being allegedly anticipated by Phillips *et al.* (US 6,592,502).

Applicant respectfully asserts that Phillips does not anticipate claim 1 because Phillips does not teach each and every aspect of claim 1 as currently amended. For example, Phillips does not disclose “training the subject at or near the point of efficiency until a state of inefficiency with respect to the at least one parameter or exhaustion occurs”. Phillips does not disclose details regarding training, or in particular, training the subject with reference to any perceived point of efficiency obtained from the Phillips stress test. In point of fact, Phillips discloses that the Phillips stress test is counterproductive to Phillips cardiovascular training as it “set back his RLE conditioning program over a week” (Col.10: 58-62). Based on the preceding

arguments, applicant respectfully maintains that Phillips does not disclose claim 1 and that claim 1 is in condition for allowance. Since claims 4-8 depend from claim 1, Applicant contends that claims 4-8 are likewise in condition for allowance.

Applicant respectfully asserts that Phillips does not anticipate claim 17 as currently amended because Philips does not teach each and every aspect of claim 17. Phillips does not disclose “training at or near a point of efficiency” as in claim 17, only that a subject may adjust time, stroke or pace during training. However, Phillips clearly discloses that the Phillips stress test is counterproductive to the Phillips RLE conditioning, and does not teach any utilization in training of any data obtained from such a test. Based on the preceding argument, applicant respectfully maintains that claim 17 is not anticipated by Phillips and that claim 17 is in condition for allowance. Since claims 18-20 are dependent from claim 17, claims 18-20 are likewise in condition for allowance.

CONCLUSION

Based on the preceding arguments, Applicant respectfully submits that claims 1, 4-8 and 17-20 and the entire application meet the acceptance criteria for allowance and therefore requests favorable action. If the Examiner believes anything further would be helpful to place the application in better condition for allowance, Applicant invites Examiner to contact Applicant's representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account 19-0513.

Date: 6-20-2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Arlen L. Olsen', is written over a horizontal line.

Arlen L. Olsen

Reg. No. 37,543

Schmeiser, Olsen & Watts

22 Century Hill Drive, Suite 302

Latham, N.Y. 12110

(518) 220-1850